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SENT VIA FEDERAL EXPRESS

May 6, 2002

Lawrence H. Norton, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

AOR 2002-07

MAY 8 11 46 AM '02

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF THE
GENERAL COUNSEL

Re: Request for Advisory Opinion

Dear Mr. Norton:

Pursuant to 2 U.S.C. § 437f, this letter requests an Advisory Opinion ("AO") from the Federal Election Commission (the "Commission") on behalf of Careau & Co., a California corporation, and Mohre Communications, a Nevada corporation (herein collectively with Careau the "Companies")¹ concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to the sale and use of Internet Service Provider ("ISP") services for Internet-based political fundraising to make contributions to Federal committees.

INTRODUCTION

Careau is a marketing company that develops programs for the Internet. Related to this, it has two proprietary programs, covering methods for allocating payments made over the Internet. Careau has licensed these programs to Mohre to facilitate the Companies' proposed fundraising activities and allocation of federal account contributions (the "Program") in accordance with guidelines approved in prior Commission advisory opinions.²

¹ On 17 October 2001, the Companies filed an Advisory Opinion Request ("AOR") with the Commission, AOR 2001-20. On 22 January, Richard F. Carrott, on behalf of the Companies, withdrew that AOR in order to clarify the Companies' position. The Companies now re-submit their revised AOR.

² The Program involves federal committees, non-federal committees, and charitable organizations. The compensation element is uniform for all organizations. This AOR, however, is concerned only with those committees that are subject to the Act (i.e., federal campaign committees) and will focus, therefore, on those aspects of the Program.

Mohre is a professional fund raising organization, acting under license from Careau, and will provide services as an ISP. The Program provider's site, while not restrictive, is specialized and intended to be a fund raising service that also provides competitively priced Internet access. As part of this specialized service, subscribers will be required to make two monthly categories of payments: one for the cost of the ISP service and the other in the form of a contribution or charitable donation, as determined by the subscribing individual.

THE COMPANIES' PROPOSAL

The Commission has noted a rising popularity in the use of the Internet, both as a form of information gathering and as a vehicle for financial transactions. In previous opinions, the Commission has concluded that contributions, otherwise permissible under the Act, could be solicited through the Internet. See AOs 1999-9, 1995-35, and 1995-9.

The Companies ask the Commission to interpret the Act and Commission regulations to permit this proposed business program for the solicitation, distribution, and accounting of federal account contributions by credit card³ over the Internet in a manner consistent with the Commission's "900-Line Program" opinions.⁴

DESCRIPTION OF THE PROGRAM

The Companies intend to offer federal committees the following services in exchange for promotion of the ISP by the committees to their supporters:

- (1) Individual citizens may join this ISP, which has been established as a vehicle for providing ISP services plus either political contributions or charitable donations [Note: Non-citizens, or prohibited individuals, as defined under the Act, may also subscribe to the service, but they will not be allowed to participate in that part of the Program that pertains to making direct contributions to the federal committees.];
- (2) Qualified subscribers may make political contributions to federal committees, using their own funds from a personal credit card and directing that the contributions be made; and,

³ As used throughout this document, the term "credit card" refers to credit cards, charge cards, debit cards, and any other commonly accepted form of electronic transfer of funds in commerce over the Internet.

⁴ The Commission has considered requests from different types of participants who deliver 900-Line Program services to political committees. The Commission has addressed the responsibilities of long distance providers, of service bureaus, and of a billing and collection company, which also performed some functions of a service bureau. The Companies believe their program combines many of the functional elements of these programs and merits similar treatment. See Advisory Opinions ("AOs") 1999-22, 1995-34, 1995-9, 1994-33, 1991-26, 1991-20, 1991-2, 1990-14, 1990-1, and 1988-28.

- (3) Alternatively, or in combination with the above political contributions, all subscribers may make charitable contributions by selecting a section 501(c)(3) organization and approving the amount of the contribution.

The various political committees expected to participate in the Program will direct their supporters to the Companies' registration website in the hope that the supporter will choose both to subscribe to the ISP and to contribute to the referring committees. In order to subscribe, the individual must complete a series of form questions. These questions, and the answers to them, also serve to satisfy the Act's and the Commission's screening procedures.⁵

As referenced above, individuals who choose to subscribe to this full service ISP may do so over the Internet by credit card and may elect to earmark⁶ a small portion of the monthly service fees as contributions to specific federal election committees or 501(c)(3) organizations. A subscriber will be charged for the ISP service itself on a monthly basis in a targeted amount of \$15.76. At the individual's discretion, up to five contributions may be made at the same time as each month's payment of service fees. The committees to receive the contributions will be determined by where the subscriber lives.⁷ The Companies will retain the full amount of the subscriber's

⁵ See AO 1995-09. See also, AOs 2001-04, 1999-22, 1999-09, and 1995-35. Additionally, the procedures are described in Exhibit No. 01, which is included as part of this AOR.

⁶ "Earmark" means a designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee. 11 CFR § 110.6(b)(1). Earmarking under the Program will be explicit and "written."

⁷ Using these prices as examples, upon approval, Mohr plans to introduce the Program as "The American Plan," at a targeted price of \$17.76 per month. Of this targeted price (\$17.76), \$15.76 will be to be paid to the Companies for the ISP services provided. Additionally, subscribers will be allowed to contribute a total of up to \$2.00 per month, in specific amounts, to as many as five election committees from the contributor's political party. The committees will vary by individual. They are the committees for federal office that directly relate to where the contributor lives, which establishes a direct nexus to the contributor: his or her congressional district; the Senators from his or her state; and, the national committee for the election of the President. If the incumbent is from another party, or if no election committee has yet been formed for one of these offices, the contribution will be paid to the affiliated national congressional or senatorial committee. The contributor may choose to make (or not to make) contributions in the following targeted amounts (including all processing fees, merchant account charges, and related fees):

- | | |
|----------------------------------|--|
| ▪ Local congressional committee: | \$0.75 per month |
| ▪ Senatorial Committees (total): | \$0.45 per month |
| ▪ National Committee: | \$0.30 per month |
| ▪ Referring Committee: | \$0.50 per month |
| ▪ 501(c)(3) Organization: | Any of the funds above not contributed to a political campaign committee |

The "referral" contribution assumes that the contributor was referred to the registration site (the "Site") from a committee's list of supporters. If this is not the case, the contributor will be asked which committee, if any, should receive this contribution. Additionally, after subscribing to the Program, the contributor may discontinue any or all of the contributions any time.

payment for the ISP service, which will include the charge for services rendered to the political committees. The political committee will receive the full amount of that credit card contribution minus the usual and normal service charges of the credit card issuers.⁸

The Companies have entered into preliminary third party agreements with vendors for other necessary services; e.g., merchant account services, credit card authorization and processing, billing name, address services, etc.). These services will be obtained from various vendors at the usual and normal charge for similar services; the rate will include expenses plus a reasonable profit to the vendor(s).⁹ In order to avoid any corporate contributions, the Companies will ensure that the federal committees do not receive any services for which the Companies or the third party vendors, with whom the Companies contract, are uncompensated or are compensated below the usual and normal charge for all services received.

CONTENT OF REGISTRATION SITE

The structure of the Companies' website for registering is important to the Program because it serves as a portal for both informing and soliciting under the Act. The Companies are relying upon the structure and form of site-guidelines from prior AOs, as discussed herein. However, and as referenced above, the Companies have also included, as Exhibit No. 01, a graphic description of the Site's pages a potential subscriber needs to complete under this Program.

COMPLIANCE WITH APPROVED CONDITIONS

The Commission has established detailed, Act-complying guidelines for properly soliciting, receiving, and accounting for contributions made over the Internet.¹⁰ The Companies have adopted a series of procedures specifically designed to ensure compliance with such guidelines. Guidelines established under Advisory Opinions 2001-4, 1999-22, and 1999-9 will be followed under the Program.

⁸ The Commission has approved plans for authorized committees whereby contributors would charge contributions to their individual credit cards. In such cases, the amount actually remitted to the committee would be reduced by usual and normal charges deducted by the card issuer (although this would not reduce the amount of the reportable contribution). The set-offs or service charges would be expenditures by the committee; such payment would be exempt administrative or solicitation costs under 2 U.S.C. §441b(b)(2)(C), 11 CFR 114.1(a)(2)(iii) and 102.6(c)(2). See AO 1994-33. Charges for credit card clearing, processing, and related expenses, which reduce the proceeds to the committee, are reportable as operating expenditures. See 2 U.S.C. 434(b)(4)(A) and (5)(A); 11 CFR 104.3(b)(3)(i) and (4)(i). See AO 1991-1.

⁹ The Commission has considered a number of business arrangements between political committees and companies to assist the committees in raising funds. See Advisory Opinions 1992-24, 1991-26, 1991-20, and 1991-18. The Commission has stated that, if the vendor does not receive the usual and normal charge for its services, it will have made an in-kind corporate contribution.

¹⁰ See AOs 1999-09 and 1999-22.

including website procedures, reports to committees, separate merchant identifications for each committee receiving contributions, "written instrument" compliance with 11 CFR § 9034.2(b) (e.g., merchant account documentation showing that the separate amount received by each committee appears on the contributor's credit card bill for each contribution made and that the contributor authorized each contribution), document storage, disclaimer and best efforts requirements, and screening procedures.

The following are the basic highlights of the Program, as proposed under this AOR:

- All contributions under the proposal will be made directly from the individual to the political/charitable entity of choice, using personal funds
- All ISP service fees will be paid directly from the individual subscriber to the provider
- The two separate categories of monthly payments (ISP service fees and contributions/donations) will never be commingled and will not be controlled by the provider because of the use of a merchant account and direct payments
- The individual's choice to participate in this special[delete the comma,] fundraising program includes choices whether to make political contributions and/or tax deductible donations:
 - The provider has no vested interest or advantage in whether the subscriber chooses to donate to a political committee or a 501(c)(3) organization
 - The political organization is at risk that the 501(c)(3) organization represents a clear advantage (e.g., a tax deduction) for the subscriber
 - The individual's choice to make a political contribution over a tax deductible donation is made without impact to the service provider

Whether to contribute or to designate the non-contributed funds to a charitable organization is the choice of the individual citizen. Arguably, the tax-deductible choice is the better one, economically. Therefore, those making the political donation will clearly want their funds to go into the political system. The Companies have no participation in these choices. In addition, as established under prior Advisory Opinions, the use of the merchant account ensures that funds are not commingled and that the corporate provider never gains control over the funds.¹¹

¹¹ The charge for the ISP service, any the contributions to federal committees, and any donations to charitable organizations are immediately debited against the individual's credit card in separate transactions, which are so

SUBSCRIBER IDENTITY AND SCREENING PROCEDURES

The Companies, on behalf of the various federal committees, intend to use the services of an Internet credit card processing vendor for verifying the cardholder's identity, as established under the Commission's guidelines in Advisory Opinion 1999-9. The Companies will also observe disclaimer and best efforts requirements and will screen for prohibited contributions in the manner approved by the Commission in Advisory Opinions 1995-9 and 1999-9. This will include, by example, the following:¹²

We may accept contributions from an individual totaling up to \$1,000. Federal law prohibits contributions to the campaign from the following:

- *the general treasury funds of corporations, labor organizations or national banks (including corporate or other business entity credit cards);*
- *any person contributing another person's funds;*
- *foreign nationals who lack permanent resident status; and*
- *government contractors.*

We [Same] may accept contributions from minor children (i.e. [underscore?], persons under 18 years of age) if the minor makes the decision to contribute knowingly and voluntarily, and the child contributes his or her own funds, and the contribution is not controlled by another individual or made from the proceeds of a gift given to provide funds to be contributed.

Additionally, following the same Commission guidelines, a donor will have to successfully complete an electronic form on the Companies' registration site, and decide to transmit that form to the Companies for further processing. The form will ask for the following:

- *the contributor's name*
- *the contributor's name as it appears on the credit or debit card;*
- *the billing address on record with the issuer of the credit or debit card;*
- *the credit or debit card number;*

itemized on the cardholder's monthly statement. The Companies use a merchant bank to provide the credit card debit services. The Companies, therefore, will never control, nor will they ever be in possession of, the funds debited against the individual's credit card for the political contribution. See AO 1994-33.

¹² See AO 1999-9.

- the expiration date of the credit or debit card;
- the contributor's residential address; and
- the amount of the contribution.

In the event a prospective donor fails to provide any of the required information, or leaves one of these fields blank, the Companies' registration site will reject the form and prompt the prospective donor to provide the missing information. This procedure, too, is consistent with the Commission's guidelines.

The Companies also intend to require the donor to check a series of boxes within the contribution form attesting that the donor's contribution is made with funds within the source restrictions and contribution limits of the Act. Specifically, the donor will be asked to attest to the legality of the contribution by checking the following boxes:

1. *This contribution is made from my own funds, and not those of another.*
2. *This contribution is not made from the general treasury funds of a corporation, labor organization, or national bank.*
3. *I am not a Federal government contractor, nor am I a foreign national who lacks permanent resident status in the United States.*
4. *This contribution is made on a personal credit or debit card for which I have the legal obligation to pay, and is made neither on a corporate nor business entity card nor on the card of another.*

The failure to check any of the attestation boxes will cause the Companies' registration site to reject the form, and display a message noting the applicable source restriction, for example: "We're sorry. Federal law prohibits contributions from the general treasury funds of corporations, labor organizations, or national banks." It will then prompt the donor either to correct any missing or inaccurate information, or to cancel the transaction.

To screen further for corporate or business entity cards, the Companies intend to take advantage of the fact that corporate or business entity credit cards are generally billed directly to the entity's offices, rather than to an individual's home. If the billing and residential addresses provided by the prospective donor are different, the Companies' registration site will display the following message:

We've noticed that the billing address on your card is different from your home address; please remember that we cannot accept corporate or business entity credit cards, and that your contribution must be made on a card that represents your own personal funds.

The donor will then be prompted either to continue with the transaction or to cancel it altogether.

In the event the credit card submission is approved, the subscriber will be prompted to provide the appropriate instructions to the merchant bank for distribution of the monthly ISP service fee and the contributions and/or charitable donations. (See below.)

MERCHANT ACCOUNT / FUNDS DISTRIBUTION PROCESS

The Commission has determined that placing contributions in a separate banking account, maintaining separate book accounts for each political committee, and providing the treasurers of the political committees with the required information satisfies concerns raised by the Commission in previous opinions.¹³ By employing a merchant bank to distribute all credit card funds to the various recipients, the individual is assuring that his or her contributions are never commingled with corporate funds. As described above, all contributions and payments for services under this Program are from the qualified individual's personal credit card. The separate monthly charges are disbursed through merchant accounts, following the subscriber's authorized instructions, and deducted from the gross amount of the contributions.

This recurring process of depositing funds directly into the campaign accounts (including each individual's section 110.6 authorizations) is made possible by the technological innovations that commerce over the Internet has made possible. Following the deposit, the individual receives real-time electronic mail confirmations of the payments for the service and for each contribution to the committees. These monthly receipts create a complete record and notice for both the individual and the committee of each contribution and improve the monthly credit card billing wait-time for the individual to react to any inaccuracy or impropriety.

¹³ The manner in which a credit card bill or invoice records the transaction is less important than the treatment of the contributions raised through fundraising with vendor participation. The greater concern arises where the funds are deposited prior to their transmittal to the committee. The Commission has concluded that placing such funds in the same corporate account where vendor places its other funds would lead to a commingling of corporate funds and campaign funds prohibited by section 441b. See AOs 1999-22, 1991-20 and 1990-1. The issue of contributions by the Companies is avoided by the immediate debiting of the individual's credit card for the making of the contribution. This eliminates the concern that the Companies or subcontractor companies are financing the political contributions made by the cardholders during a certain period and, thereby, making advances of corporate funds. See AO 1994-33. Furthermore, because the amounts paid by the subscribers for the ISP service or the charitable donations represent separate line-item payments, they are not reportable as contributions by the federal committees.

As stated, the amount of all funds deposited into the federal accounts will be reduced by the clearing, processing, and service charges. However, the entire amount of the subscriber's credit card transaction will be treated as a contribution to the political committee, as provided in Advisory Opinions 1999-9, 1995-34, 1995-9, and 1994-33, in order to avoid the receipt of corporate contributions. Additionally, the monthly ISP fee, charged at a fair market price, is clearly within the mid-range of similar programs.¹⁴ The Companies will not market the ISP services other than through this program, so there is no possibility that the Companies will sell those services to anyone for more or less than the targeted price of the Program (\$15.76).

In the event the processing company rejects the credit card transaction, the Site will then send a message to the prospective donor that the contribution has been rejected. Additionally, in the event the credit card submission is approved, each committee will be assigned a separate merchant reference number, which will result in the contributor's credit statement reflecting the contributions in the name of each committee. See AO 1999-22.

INFORMATION TO FEDERAL COMMITTEES

The proposed screening procedures will allow the committees (and other donor recipients) to verify the identity of the contributor with the same accuracy as the service provider. Additionally, the electronic contributor forms and the merchant bank account records are the functional equivalent of a written instrument and instruction from the contributor. This database of information, which can be reproduced in hard copy as needed, is important for federal committee reporting purposes.

This information, on each contributor, will be reported to each committee on a monthly basis and be available, at all times, on a current basis. The committees will be able to compare the information to their separate contributor records for cumulative reporting purposes. Additionally, the database format will be stored for the required periods by both the committees and the Companies.

Although the recurring amounts paid under the Program are small, other contributions by the individual to the federal committees could aggregate in excess of \$200, triggering further record keeping requirements as well as the requirement to report the date and amount of the contribution and the name, address, employer, and occupation of the contributor. 2 U.S.C. 431(13), 432(c)(3), and 434(b)(3)(A); 11 CFR 100.12, 102.9(a)(2), and 104.3(a)(4)(i). The information provided to the

¹⁴ Similar ISP programs range in price from around \$10.00 per month (e.g., NetZero Platinum) to around \$22.00 per month (e.g., AOL and MSN).

campaign committees will be sufficient to match contribution records and compile any additional reporting information that may become necessary.

LEGAL BASIS

The Act clearly allows individual citizens to contribute to federal accounts. Prior Advisory Opinions have established the procedures for establishing that a contributor is a non-prohibited person and have established the procedures for allowing these individuals to contribute by credit card over the Internet, with the key elements for this being:

- it must be the individual's clear intent to contribute to a specific campaign; and,
- the funds paid must be directly from the individual to the campaign account, or be clearly segregated; and, the funds may not be commingled with prohibited corporate or organizational treasury funds.

Through a uniform series of interpretations, the Commission has permitted political committees to raise funds by credit card and other electronic means,¹⁵ including credit card contributions over the World Wide Web.¹⁶ While these Advisory Opinions deal with matching funds, the Companies believe that these opinions reflect a general opinion of the Commission encompassing contributions to all federal accounts, as defined under 11 CFR § 102.5(a)(1)(i). It is important to note that the Commission considered whether implementation of procedures for soliciting, receiving, and accounting for credit card contributions over the Internet would compromise the intent of the Act or regulations before approving changes to the Matching Act to allow such programs. See AO 1999-9, citing Advisory Opinions 1999-3, 1995-35, 1995-9, 1994-40, and 1993-4.

In past advisory opinions, the Commission has also established a procedure for allowing individual contributors to earmark contributions from personal funds to be deposited with the various committees through a merchant account. See AO 1999-22. The regulations provide that all contributions by a person made on behalf of or to a candidate, including contributions that are in any way earmarked or otherwise directed to the candidate through an intermediary or conduit, are contributions from the person to the candidate. 11 CFR § 110.6(a) and 2 U.S.C. § 441a(a)(8). Additionally, a contribution is considered to be made when the contributor relinquishes control over the contribution, and the contributor is considered to relinquish control over the contribution when the contributor delivers it to the candidate, to the political committee, or to an agent of the political

¹⁵ See, Advisory Opinions 1999-9, 1995-34, 1994-33, 1991-4, 1990-4, 1984-45, and 1978-68.

¹⁶ See, Advisory Opinions 2001-4, 1999-22, and 1999-9, citing 1995-35 and 1995-6

committee. 11 CFR § 110.1(b)(6). Based upon these provisions of section 110, the Companies believe that an individual is entitled to earmark personal funds and control the distribution of those funds directly to political committees¹⁷ through the standard business clearing and forwarding operation of a merchant account. See AO 1999-22.

These are precisely the methods intended to be used by the Program and there appears to be no serious doubt that these methods comply with law.

CONCLUSION

It is not possible to predict the near-term effect that will be generated by the newly passed campaign reform legislation. The political system, however, will continue to need money for campaigns. The question is how to provide a manageable way to involve and reach out to average people, creating a grassroots effort in the campaign finance system. The Companies' program offers a practical way to re-involve direct participation by the modest contributor through new technology – the Internet. Once viewed as revolutionary and mystical, the Internet has now become familiar, even the vehicle of choice for a majority of the population when performing their everyday tasks. Political contributions need be no exception.

Prior Commission Advisory Opinions, the Act, and the regulations support the Program. This is particularly true in that:

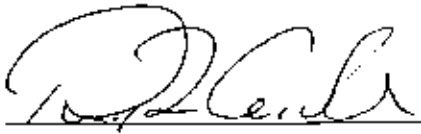
1. The Companies, through Mohre, are acting as a professional fund raising organization, for which they are being paid a fair market price and profit (in funds directly paid to the Companies' account, separate from the funds contributed);
2. The political committees are being compensated (contributions) in a reasonable amount for their lists and activities;
3. The contributions are made directly to the campaign committees by individual citizens qualified under the Act;
4. The individual contributor is freely making his/her choice to participate in the fundraising activity; and,
5. The individual will be allowed to select a 501(c)(3) organization to receive any portion of his or her structured but non-contributed donations.

¹⁷ As discussed in the "Compliance" section, contributors will be notified in the "real time" confirmation that the credit card bill will reflect the contributions to each committee.

The sum and substance of this AOR is that the Companies are asking the Commission to affirm that the Companies' program for the solicitation, distribution, and accounting of federal account contributions over the Internet is permissible and that the procedures established by the Companies comply in all respects with the several Commission Advisory Opinions on the subject and with the Act and regulations. The Companies, therefore, respectfully request that the Commission issue an Advisory Opinion approving this program and the guidelines presented for implementing it.

Respectfully,

CAREAU & CO.

By 

Richard F. Carrott, President

Encl(s).

cc: Chairman Mason
Vice Chairman Sandstrom
Commissioner McDonald
Commissioner Smith
Commissioner Thomas
Commissioner Toner



*"It's about
Neighbors telling Neighbors
...where you own the Neighborhood."*

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SENT VIA FEDERAL EXPRESS

6 May 2002

David M. Mason, Chairman
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: Re-submitted Advisory Opinion Request

Dear Chairman Mason:

On 17 October 2001, Careau & Co. filed an Advisory Opinion Request with the Federal Election Commission, AOR 2001-20. On 29 January, Careau withdrew its AOR in order to clarify its position for the Commission. [See attached.] We have now re-submitted our revised AOR. [See also, attached.]

CAREAU'S PRIOR AOR: STAFF'S QUESTION / CAREAU'S ANSWER

In its prior AOR, Careau emphasized the following points:

- Potential contributors will be informed that the program includes the opportunity to make a political contribution
- Any contribution will be made solely at the choice of the individual donor
- Donations will be paid separately from service charges and will be charged directly by the contributor to the federal campaign account

The structural elements of Careau's program, including credit card contributions over the Internet, have been addressed in prior Advisory Opinions; compliance with these guidelines is not an issue. However, in Draft AO 2001-20, the FEC's staff tentatively concluded that, because all or a portion of the non-contributed funds raised under Careau's program, as then proposed, might ultimately go to the service provider, all of the payments represented prohibited contributions by prohibited individuals under the Act.

Careau believes that staff's tentative conclusion raises the following question: What if the non-contributed funds do not go to the service providers? Careau has

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answered this question in a manner that strikes a balance between an individual citizen's protected right to contribute and the prohibitions on contributions enumerated under the Federal Election Campaign Act.¹

Our solution is a simple one: Any portion of funds that an individual citizen chooses not to give to his or her candidates will go to a 501(c)(3) charity the individual selects. Of course, we hope that the individual's purpose in subscribing to the service is to support his or her party. But, if the individual chooses not to do so, the charitable donation will result in a tax deduction to the individual that is not available from a political contribution. Thus, the existence of these options supports the arguments that: (a) making political contributions under Carreau's program will be solely in the discretion of the individual; and (b) such political contributions will be made directly to the selected committees by the individual citizen.

POLICIES REGARDING POLITICAL CONTRIBUTIONS

Campaign critics say that ordinary citizens have been put off by the dominance of big contributors. They argue that these "modest donors," who give \$10, \$20, or even a few hundred dollars, once a bulwark of campaign participation, have become an anachronism.

"Quite frankly, it is a major factor contributing to the disengagement and alienation of people from the political process," said Jim Knox, executive director of California Common Cause. "The message the voters get is that their contributions don't matter." [Quoted from the *LA Times*.]

It is already being argued that, in attempting to address elements of this problem, the new campaign finance legislation has also created a vacuum that must be filled. The vacuum was created by two facts. The first is the unpleasant fact that candidates need to raise money – lots of money – to run for office. The second is the fact that building a wide base of small donors is laborious and unpredictable. For example, expensive mailings can backfire or become instantly ineffective if donors' attentions are turned elsewhere. In addition, creating a wide base of donors requires a grass roots organizing effort that becomes more difficult each year.

The program proposed under Carreau's AOR could help address both sides of this problem by re-involving the modest contributor through new technology – the Internet.

¹ Please note that this AOR is not subject to the construction and interpretation of the new campaign legislation being drafted by the Commission for two reasons: 1) the program deals with hard money, not soft money; and 2) the amounts and reporting elements under the program comply with the Act.

OUR REQUEST

The client-committees, with whom we are dealing, have suggested that we request an Advisory Opinion regarding our proposal. This is not so much because of the new campaign reforms – our program does not deal with soft money or (necessarily) with contribution limits – but because our program represents a new source of direct contributions from a potentially large class of voters and involves credit card payments over the Internet. We agree that the Internet represents a still-new technology for facilitating direct contact between voters and candidates. It also represents an important opportunity to allow voters to begin replacing the “big-money” and “special-interest” groups in the funding of federal candidates. Guidelines from the Commission are an important step in this evolution.

The Federal Election Commission has a statutory mandate to regulate political speech while still comporting with the constitutional liberties of free speech (political speech being a core element) and free association.² On the other hand, many feel that there is a substantial basis to argue that political speech on the Internet should be wholly unregulated. Some individual Commissioners have expressed that it should be the FEC's goal to encourage, not discourage, this new form of political participation, and that regulation of political activity over the Internet should unleash, not restrict, the Internet's promise while preserving the core purposes of the Act.

One of the main objectives of the Commission is to encourage individual citizen participation in our elections by providing clear, practical rules. It would be truly ironic if the Federal Election Commission were to interpret the Act (a law that is premised on encouraging federal campaign committees to involve individual citizens in campaign finance) in a manner that would impede the committees' use of the most democratic form of dissemination of information ever invented – the Internet.

The Companies believe that the Commission is in a position to achieve the following:

- ensure that the Internet will change the political process significantly by empowering individual citizens to make political contributions over the Internet
- reduce the role of special interests by reducing the dependency of political committees on special interests

² This section contains (approximately the next three paragraphs) an amalgamation of thoughts compiled from notes that may include portions of published presentations from several Commissioners. As used here, any such statement may be used out of context and is not intended to represent anybody's thoughts but my own.

- allay public concern about control of federal elections and the source of money in politics
- promote the involvement of a concerned public in the election process and free speech

Careau's program is topical and, we believe that it is much needed. The new campaign reform measures, which have been passed into law, serve the ethical and legal purposes intended, but a practical question remains as to whether increasing the limits for the existing donor base will fill the finance void left. Careau's program offers the unique opportunity for political committees affected by these new regulations to re-involve the modest, and somewhat neglected, donor in a system that rightfully belongs to ordinary citizens.

We believe that the program is appropriate for reaching out to communities of interest rather than special interests, involving each contributor with his or her elected official. And we believe that by using the Internet to allow these individual citizens to contribute directly to the election committees of their choice we can help establish the grass roots program that has become so difficult to maintain.

A personally addressed version of this letter has been sent to each Commissioner to explain both our purpose and our reason for the withdrawal of the prior version of our AOR. Thank you for your time in allowing us to bring this matter before you.

Respectfully,



Richard F. Carrott
Chrm. and C.E.O.

w/attachments

cc: Lawrence H. Norton, General Counsel

IN THE MATTER OF: ADVISORY OPINION REQUEST 2001-20

Requested by: Richard Carrott, President - Carreau & Co.

Action taken: No opinion issued because requester withdrew AOR by letter dated January 22, 2002

Date file closed: OGC letter dated January 22, 2002

Topic: Internet-based political fundraising by Internet Service Provider under agreements with Federal committees.

Citations: 2 U.S.C. 441b(a) and 11 CFR 114.1(a)

Comments: OGC circulated Agenda Document 02-05 for meeting of January 24, 2002, but withdrawal letter received January 22.

FEDERAL ELECTION COMMISSION
Washington, DC 20463

January 22, 2002

Richard F. Carrott
Carreau & Co.
14183 Maya Circle
Moorpark, CA 93021-3552

Re: AOR 2001-20

Dear Mr. Carrott:

This refers to your letter by e-mail dated January 22, 2002 requesting that your advisory opinion request submitted on October 17, 2001 be withdrawn. This request posed the question of Internet-based political fundraising by Internet Service Provider under agreements with Federal committees.

This will confirm that we consider AOR 2001-20 as withdrawn and are closing our files on the matter.

Sincerely,

(signed)

N. Bradley Litchfield
Associate General Counsel

Welcome Page

Welcome to the Registration Site for the
AMERICAN PLAN
A Chance to Make YOUR Choice Count

[Web Page]

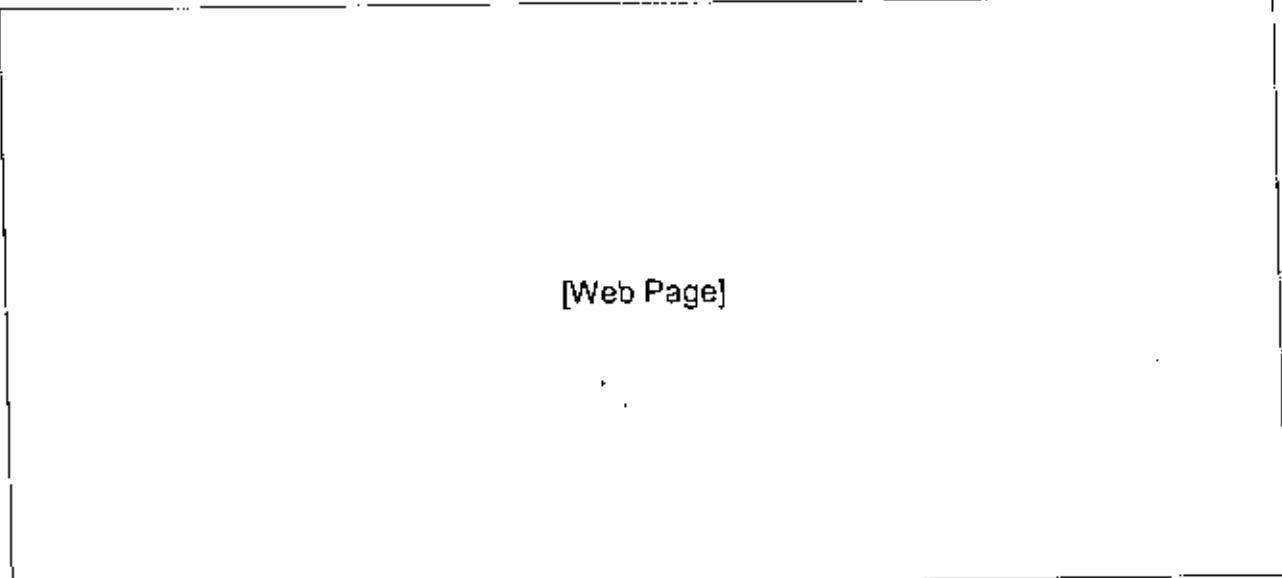
\$17.76

Per Month Includes Premium Internet Access
 Plus the Chance to Support YOUR Party and YOUR Candidates
 or, Make a Charitable Contribution
It's YOUR Choice

Paid for by the donor-recipient committees and organizations designated by you.

- Federal campaign supporters ("Supporter/Supporters") are referred to this site by various committees
- On this page, the Supporter is asked to enter his/her e-mail address if they wish to proceed
- The Supporter is reminded that this program is both an Internet Access Service and a fund-raising vehicle for accepting contributions using credit cards
- "If you wish to become a part of this FUND RAISING opportunity, enter your 5-digit residential Zip code number here: ____ _" [A text box will be placed after this statement for entry of the person's number.]

Sign-Up Form



[Web Page]

- Supporters are told something to the effect that: "Whether you choose to make a campaign contribution or charitable donation, all registrations are designed to comply with federal campaign requirements. Federal law requires political committees to report the name, mailing address, occupation, and name of employer for each individual whose contributions aggregate more than \$200 in a calendar year. Although your contributions under this program will not exceed \$200, campaign committees are required to make a 'best effort' to obtain, maintain, and be prepared to submit such information. We, therefore, ask you to complete the following secure form:"
- If the Supporter fails to enter any of the required information, a "pop-up" screen alerts the individual that he/she will not be allowed to proceed until the information is provided.
- The Supporter is reminded that this is a secure page and is asked to enter the required information, including his/her: name, street address, city, state, Zip code, occupation/employer, credit card choice, credit card number, and credit card expiration date.
 - Should a Supporter attempt to proceed without completing the form, a "pop-up" screen will alert the person to the problem, for example: "In order to process your form and contribution, we need your [employer's name, etc.] entered in the space required."

- If the billing and residential addresses provided by the Supporter are different, the web site will display the following message:

We have noticed that the billing address on your card is different from your home address. Please note that we cannot accept corporate or business entity credit cards. Your contribution must be made on your personal credit card. This is a reminder that your contribution must be from your own funds and not those of another. If these are your funds, please proceed.

[The donor will be prompted, then, either to continue with the transaction or to cancel it altogether.]

- After completing and reviewing the information provided on the electronic form, the Supporter is told that he/she will now need to choose which campaigns, if any, or charitable organizations he/she wishes to support.
- "On the next page, you will be asked to review and confirm the contributions you wish to make. Please 'click' the 'process my information' button to proceed."

Contribution and Solicitation Page

[Web Page]

- Supporters are greeted with: "On this page, you are asked to decide whether you wish to contribute to campaign committees, a charitable organization, or a combination of these. You may do this by directing that a part of your monthly fee should be deposited directly to the associations of your choosing."
- Supporters are informed: "Whether you choose to make one contribution per month or any combination of contributions will not affect your service. The total of your contribution payments will be \$2.00 and your separate ISP service fee will be \$15.76. Your choices and payments will total \$17.76 per month."
- Supporters are then informed: "All contributions will be confirmed by e-mail and your monthly credit card statement will list your contributions as separate line-item payments. The confirmation e-mail will also provide a link to a Website allowing you to modify your contribution choices at any time."
- Supporters are asked to check one of the following two boxes: 1) Yes, I want to contribute to one or more of the following committees and/or charitable organizations.
- Supporters are then prompted: "Please review the following list of campaign committees and charitable organizations, along the monthly contribution amount listed for each of the committees. After reviewing the list, please select one of the following choices:

1. "I wish to make all of the listed contributions.
 2. "I would like to determine each of the donations individually"
- If the Supporter selects number "1," he/she is prompted to proceed to the next step
 - If the Supporter selects number "2," he/she is prompted to "click" the "yes" or "no" box following each name and contribution amount
 - Each line displays the committee/candidate name and the total contribution amount
 - If the Supporter selects number "2," he/she is also prompted to choose one charitable organization to receive those funds not contributed to the deselected committees
 - NOTE: The Web page will state that if a committee does not yet exist for any of the listed elected federal offices serving the donor's locale, the default committee in each category is the national party committee for that office (e.g., the Democratic Congressional Campaign Committee and the National Republican Congressional Committee, or the Democratic Senatorial Campaign Committee and the National Republican Senatorial Committee)
- After the Supporter has reviewed the donation list and made his/her choices, he/she is prompted: "After reviewing the list, please select one of the following choices:
 1. "I am satisfied with my choices and wish to proceed to the next page
 2. "I wish to modify my choices
 3. "I wish to leave without making any contributions"
 - When the Supporter selects the first choice, a "pop-up" screen appears, listing only the donation choices, the name of the committee to receive each donation, and the amount of each donation. The donor is asked to confirm that he/she wishes to have this amount deposited directly to the account of each listed committee each month. The donor is prompted to "click" either the "yes" or "no" box displayed below the list.
 - If, in reviewing the list of committees and donations, the Supporter chooses "no," he/she is prompted to return to the selection screen or terminate the registration process.
 - If the Supporter is satisfied with his/her choices, he/she is prompted to express his/her understanding of this by "clicking" one of the displayed boxes, for example:
 1. "I understand my choices and that these contributions are made separate from my monthly ISP service fee. The total of monthly

charges will be \$17.76, and I will receive a confirmation of each payment.

2. "I have decided not to subscribe to this service and wish to terminate this program without making any contributions.
3. "I would like to review my contribution choices again."

Attestation Page

[Web Page]

- If a Supporter has chosen to contribute to a federal campaign account, he/she will be required to respond to the statements in this section.
- "Federal election campaign committees may accept voluntary contributions from individuals, provided the contributions do not exceed, in the aggregate, \$1,000. However, federal law prohibits campaign contributions from:
 - the general treasury funds of corporations, labor organizations, or national banks (including corporate or other business entity credit cards);
 - any person contributing from another person's funds;
 - foreign nationals who lack permanent resident status; and,
 - government contractors."

I have read and understand these rules [yes – no]

- "In order for us to process your donations, we ask you to confirm the following information by 'clicking' the 'yes' box if the statement is true and the 'no' box if the statement is false:
 - These contributions are voluntary and I am directing that they be made directly to the committees in my name [yes – no]

- I am making these contributions from my own funds and not those of another person [yes – no]
- These contributions are made from a personal credit card for which I have the legal obligation to pay, they are not made on a corporate or other business entity credit card nor on the credit card of another person [yes – no]
- I am a United States citizen or a person with permanent resident status in the United States [yes – no]
- I am not a federal contractor [yes – no]
- In the event that a Supporter answers “no” to any of the statements or fails to give a response to one of the statements, a “pop-up” screen will appear stating, for example:

Sorry, federal law prevents committees from accepting contributions from [e.g., foreign nationals who lack permanent residential status in the United States]. If you believe you may have marked the wrong box, you should review your response.

[The Supporter will then be prompted to return to the previous screen, continue the subscription process without making any donations, or end the session.]

Thank You Page

[Web Page]

- "Congratulations. You have successfully completed the sign-up process."
- "An e-mail confirmation has been sent to you for each of the contributions you have made. Each month you will receive a similar e-mail confirming the payment of your monthly service fee and each of your contributions to each organization. Although your political contributions are not deductible for Federal Income Tax purposes, you should retain these confirmations and compare them to the line item charges on your monthly credit card statements."
- "Each confirmation will also include a link to a Website where you may discontinue or modify your contribution list at any time."



"Richard F. Carrott" <rfe@careau.com> on 05/21/2003 04:01:38 PM

To: Michael Marinelli/FEC/US@FEC
cc: Ted Johnson <tedjohnson@earthlink.net>

Subject: Response to 05-10 Requests

Mr. Marinelli -

In response to your 10.May e-mail, I am providing the attached submissions (see attached):

- 1.. Our response to your request items 1 through 4.a.
- 2.. A summary memo addressing item 4.b.
- 3.. A memo, with footnoted references, related to 4.b.
- 4.. A copy of the 10.May e-mail as an attachment to the memo referenced at

#3, above

Please let me know if you have any additional questions. I realize that you are scheduled to be away from your office for the next week or two and will await your return.

Respectfully,

Richard F. Carrott
Careau & Co.
Phone: (805) 553-0150
Fax: (805) 435-3687

***** Confidentiality Statement *****

Privileged and/or confidential information may be contained in this message and/or any attachments hereto. This material is and shall remain the sole property of the sender ("sender"). If you are not the addressee indicated in this message, or if you are not responsible for delivery of this message to the addressee, you may not copy or deliver this message, or any attachments hereto, to anyone. In such case, you should destroy this message and any attachments hereto and kindly notify Sender at once. Please advise Sender immediately if you or your employer do not consent to restrictions and/or conditions of this kind. Opinions, conclusions and other information in this message that do not relate to the official business of Sender shall be understood as neither given nor endorsed by it.



- att1.htm



- 02.05.20 Summary MEMO - FEC-S Concerns.DOC



- 02.05.10 Email from FEC (Clarification).doc



- 02.05.20 MEMO re FEC-S Concerns.DOC



- 02.05.20 Response to Email from FEC.doc

Richard F. Carrott

From: "Michael Marinelli" <mmarinelli@fec.gov>
To: "Richard F. Carrott" <rfe@careau.com>
Cc: "Ted Johnsen" <tedjohnsen@earthlink.net>
Sent: Friday, May 10, 2002 12:13 PM
Subject: Re: Careau's AOR

To Mr. Carrot: (Document link: Michael Marinelli)

This e-mail is a follow-up to our May 9th phone conversation and your invitation to seek further clarification. As you know, we have received your May 6th letter. However, further information will be needed before the submission can be treated as an advisory opinion request. Some of these issues were discussed in that May 9th conversation and in an earlier May 8th phone conversation with your colleague, Mr. Johnson. The purpose of asking them again is to memorialize that prior conversation. Your e-mail response will be sufficient for the Commission's record. Therefore, please provide the following information.

1. Please confirm that under all circumstances, no person may participate in you internet program without also making \$2 in political contributions to Federal candidates and/or donations to 501(c)(3) organizations.
2. Please provide an example of the 501(c)(3) organizations you may include in your proposal
3. You state on footnote 7 of page 3 that "additionally, after subscribing to the Program, the contributor may discontinue any or all of the contributions at any time." Please explain whether this means that, at some point after joining your program, an individual could end up making less than a total of \$2 in either contributions or donations.
4. You state on page 4 in the first paragraph that "the political committee will receive the full amount of the credit card contribution minus the usual and normal service charge of the credit card issuers." Presumably, these service charges will be paid to the vendors you will contract with to perform various aspects of the program you have identified (merchant account services, credit card authorization and processing, etc.)
 - a. Will Careau Co. or Mohr Co. receive any portion of these fees as compensation for the services they themselves have provided to the political committees (by establishing the donation/contribution program you describe)
 - b. Identify what consideration or compensation Careau Co. or Mohr Co., will otherwise receive for providing their services to the political committees who participate in your program.

When we receive your response will give further consideration to your proposal as an advisory opinion request. If you have any questions please feel free to contact me at (202) 694-1574 or by e-mail.

Sincerely
 Michael Marinelli

5/10/2002

Richard F. Carrott

From: "Michael Marinelli" <mmarinelli@fec.gov>
 To: "Richard F. Carrott" <rfc@careau.com>
 Cc: "Ted Johnsen" <tedjohnsen@earthlink.net>
 Sent: Friday, May 10, 2002 12:13 PM
 Subject: Re: Careau's AOR

To Mr. ~~Carrot~~ Carrott: (Document link: Michael Marinelli)

This e-mail is a follow-up to our May 9th phone conversation and your invitation to seek further clarification. As you know, we have received your May 6th letter. However, further information will be needed before the submission can be treated as an advisory opinion request. Some of these issues were discussed in that May 9th conversation and in an earlier May 8th phone conversation with your colleague, Mr. Johnson. The purpose of asking them again is to memorialize that prior conversation. Your e-mail response will be sufficient for the Commission's record. Therefore, please provide the following information.

Consistent with this e-mail and our phone call of 14 May 2002, I am replying to your request on behalf of Careau & Co. and Mohre Communications (the "Companies"), with respect to the [pending/re-submitted] AOR the Companies filed on 6 May 2002.

1. Please confirm that under all circumstances, no person may participate in your internet program without also making \$2 in political contributions to Federal candidates and/or donations to 501(c)(3) organizations.

As you know, many questions cannot be answered "yes" or "no" without becoming misleading. This reading is correct, and I do confirm your reading of the program, but with what I feel is a necessary explanation.

The general purpose of the Internet program presented under our AOR is to provide a vendor-assisted fund-raising program that includes, as an option, political campaign contributions. We feel the program embraces the elements of both free association and free speech. As I explained to you in our last phone conversation, any individual, as defined under the Act, may join/subscribe to our program; however, only non-prohibited individuals may choose to make political contributions to federal accounts. Conversely, no individual is required either to join the program or to make a political contribution.

2. Please provide an example of the 501(c)(3) organizations you may include in your proposal

The Boys and Girls Club and United Way.

3. You state on footnote 7 of page 3 that "additionally, after subscribing to the Program, the contributor may discontinue any or all of the contributions at any time." Please explain whether this means that, at some point after joining your program, an individual could end up making less than a total of \$2 in either contributions or donations.

This is a good catch, thank you. The phrase should have read, "... any or all political contributions at any time."

As referenced above, a person decides to subscribe to our program will need to make monthly contributions, totaling the targeted \$2.00, to any combination of the political or non-political (charitable) organizations of their choosing. The predicate issue, however, is that they must first make the choice to join. Furthermore, once an individual has made that choice, they retain the right to quit the program (and stop contributing) at any time.

4. You state on page 4 in the first paragraph that "the political committee will receive the full amount of the credit card contribution minus the usual and normal service charge of the credit card issuers." Presumably, these service charges will be paid to the vendors you will contract with to perform various

5/10/2002

aspects of the program you have identified (merchant account services, credit card authorization and processing, etc.)

Correct; the contributor and the committees will be accessed the full amount contributed by the individual, but the cash amount deposited to the campaign [or charitable] account will be the charged amount less the third party processing and handling charges. We have structured the direct payment of contributions along the lines of prior Commission opinions, where the amount actually contributed to the political committee is reduced by the clearing processing, and service charges (which charges are considered expenditures by the political committees), but where the entire amount is treated as a contribution to the political committee. See, for example, Advisory Opinions 1995-34. The main difference being that under our program the Supporter makes each contribution (political or non-political) directly; the funds are not being handled by a corporation that is attempting to segregate those contributions from corporate treasury funds or expenses.

- a. Will Carreau & Co. or ~~Mohr Co.~~ Mohre Communications receive any portion of these fees as compensation for the services they themselves have provided to the political committees (by establishing the donation/contribution program you describe)

No.

- b. Identify what consideration or compensation Carreau & Co. or ~~Mohr Co.~~ Mohre Communications, will otherwise receive for providing their services to the political committees who participate in your program.

Please refer to the accompanying memos – a summary version and a more detail version. These memos were written after you clarified your underlying concern about "adequate compensation" during our much appreciated (by me) phone conversation.

When we receive your response will give further consideration to your proposal as an advisory opinion request. If you have any questions please feel free to contact me at (202) 694-1574 or by e-mail.

If you have any further questions, please let me know.

Sincerely
Michael Marinelli



Memorandum

To: Michael Marinelli **cc:** Ted Johnsen
From: Richard F. Carrott **Date:** 05/20/2002
Re: Summary of Compensation/Consideration Concern Memo

Mr. Marinelli —

Thank you for taking the time to explain what the FEC staff ("FEC-S") believes is the crucial problem with our revised and re-submitted AOR. As I understand it, the FEC-S reads the AOR to suggest that the only compensation the Companies¹ will receive from the political committees is the endorsement of the program and the contribution of the committees' lists of supporters. The FEC-S believes that this is not enough. The Companies believe, however, that they receive other (real) compensation and that there are answers, therefore, to this concern raised by the FEC-S.

The Companies will be contracting with the political committees for the committees to spend their funds and resources on the marketing effort to their own political supporters ("Supporters"). Obviously, this will result in a cost-avoidance benefit (i.e., compensation) to the Companies. Additionally, it means that the committees will bear risks of the program, both in terms of marketing and in terms of return on investment.

In prior Advisory Opinions, the Commission has considered and allowed a number of business arrangements in which companies assisted political committees in raising funds, provided that these arrangements avoided creating a situation where the vendor made an indirect political contribution to the committee – for example, by the vendor providing services to a political committee either without charge, or at less than the usual and normal charge – a violation of 2 U.S.C. 441b(b)(2). The Commission has expressed concern that the vendor could subsidize the committee's activities in two ways, either of which would constitute a prohibited political contribution. First, the Commission has been concerned that the vendor could pay for some of the costs pertaining to the committee's program, and therefore the Commission wanted to ensure that none of the costs of the program would be left unpaid by a committee. Second, the Commission has been concerned that, regardless of the degree of success in the effort to raise funds, the committee would retain contribution proceeds while foregoing little, or the committee would assume little or no risk with the vendor bearing all, or nearly all, the risks related to raising the contributed funds.

Our AOR presents a variation on the general vendor-assisted fundraising themes, in a manner that we believe satisfies the Commission's two underlying concerns regarding

¹ The "Companies" refers to both Carreau & Co. and Molire Communications, for whom Carreau has filed the joint AOR.

adequate compensation by committees. Under agreement with the Companies, the contracting committees themselves are responsible for actually marketing the program to their unique list of Supporters. As such, the committees retain their Supporter list but bear the costs and risks associated with the marketing efforts.

In terms of compensation, the Companies are providing the program and being paid no matter whether the Supporters make political or charitable contributions. The committees are both marketing the program and assuming a risk as to whether their Supporters will make political or charitable contributions.

Not only do we feel that the structure of our program satisfies the Commission's concerns, consistent prior Advisory Opinions, but we also feel that it represents a new source of hard money financing by involving modest contributors in a practical grass-roots program.

For more detail, please refer to the attached, expanded memorandum.



Memorandum

To: Michael Marinelli
From: Richard F. Carrott
Re: FEC-S Concerns

cc: Ted Johnsen
Date: 05/20/2002

Mr. Marinelli -

On 8.May 2002, the Companies¹ filed and the FEC received our re-submitted Advisory Opinion Request ("AOR"). On 10.May, following several communications, you sent an e-mail to me requesting clarification on several points (see attached). I, in turn, sent an e-mail asking you to identify the concerns underlying this request so that we might respond more precisely. Then, during a phone conversation on 14.May, you identified what the FEC staff ("FEC-S") believes to be their main concern.

In the 14.May conversation, you stated that as the FEC-S reads the program presented under our AOR (the "Program"), we have shown the payments for monthly service and the contributions to be separate, direct payments by an individual contributor. They (the FEC-S) also understand that the contributor will have a choice, within the Program, as to whether the contributions will be political or charitable. Additionally, you seem to believe that the charitable contribution option² seems to resolve the prior concern raised by the FEC-S that the donation could amount to a prohibited corporate contribution.³

FEC-S Concerns

As to the re-submitted AOR, you isolated for me what you feel is the FEC-S's concern with the Program. This issue is raised at clarification point number "4.b." of your 10.May e-mail. The FEC-S believes the essential problem with the revised and re-submitted AOR, "as they read it," is that the only compensation the Companies receive from the political committees appears to be the endorsement of the program and the contribution of the committees' lists of supporters ("Supporters"). You feel that the FEC-S believes that this is not enough - based upon prior Commission opinions.

Comparing the program to "credit card-type affinity programs," you clarified that in the past the Commission has held that just recommending a program is not enough and does not

¹ The "Companies" refers to both Careau & Co. and Mohre Communications, for whom Careau has filed the joint AOR.

² Under the program, Supporters are given an option to contribute to federal campaigns or to contribute to section 501(c)(3) charitable organizations, or a combination thereof.

³ See, Draft AO 2001-20.

provide adequate compensation to the provider. This is not to suggest that you were taking an absolute position; you were clear that you intended to do more research on the issue and that you were giving us an opportunity to participate.

For reasons I will explain, we believe that the Program provides for the Companies to receive other (real) compensation, and we believe, therefore, that there are answers to this new concern of the FEC-S. In brief, the Companies will be contracting with the political committees to provide for payment under the Program and for the committees to spend their funds and resources on the marketing effort to their political supporters ("Supporters"). Obviously, this will result not only in direct payment to the Companies by the Supporters, as compensation under the Companies' contracts with the committees, but also in a cost-avoidance benefit (i.e., compensation) to the Companies. Additionally, it means that the committees will bear real risks under the Program, both in terms of marketing and in terms of return on investment.

Discussion Points

In prior opinions, the Commission has considered a number of business arrangements between political committees and companies to assist the committees in raising funds and has determined that the vendor will not have made an in-kind corporate contribution if the vendor receives the usual and normal charge for its services.⁴ Similarly, the Commission has determined that as long as a vendor, or any other company providing service to the vendor in connection with its service, provides its usual and normal services at its usual and normal charges it will not have made a prohibited corporate contribution.⁵

The Companies believe that they have met the requirements raised by the Commission in these prior opinions, in part, by giving the contributor options to make political or non-political/charitable contributions (or combinations of the two) under a single program that provides for separate compensation to all parties. Such options create, within the same program, a standard for measuring both what are usual and normal charges and what are adequate compensation and procedures for dealing with similarly situated non-political clients. These arrangements avoid creating a situation where the vendor provides services to a political committee either without charge, or at less than the usual and normal charge, and thereby makes a corporate contribution prohibited by 2 U.S.C. 441b(b)(2).⁶

In specifically addressing the issue of "adequate consideration" from committees to vendors in vendor-assisted fundraising programs, the Commission has expressed concern that a vendor could indirectly subsidize a committee's activities in two ways (the "Two Concerns"), either of which would constitute a prohibited political contribution. First, the Commission has been concerned that the vendor could pay for some of the costs pertaining to the committee's program, and therefore the Commission wanted to ensure that none of the costs of the program would be left unpaid by a committee.⁷ Second, the Commission has

⁴ See Advisory Opinion 1994-33.

⁵ See Advisory Opinion 1990-14.

⁶ See Advisory Opinion 1999-22.

⁷ As set out in the AOR, the Companies' monthly service fees (costs, including a reasonable profit) under the Program are paid separate from the contributions, and these fees are well within standard industry pricing models.

been concerned that, regardless of the degree of success in the effort to raise funds, the committee would retain contribution proceeds while foregoing little, or the committee would assume little or no risk with the vendor bearing all, or nearly all, the risks related to raising the contributed funds.⁸ This appears to be the basis of the Commission's position that the committees provide adequate compensation to contracting service providers. An example of Commission response to these concerns has been to require an adequate deposit by the committees to the vendor where the vendor is advancing costs of marketing the proposed program.⁹

In reviewing prior Advisory Opinions there seem to emerge three basic categories of vendor-assisted fund raising programs. I believe that there is an additional category -- the "prospect piece" programs, which both represent a common industry practice and exemplify elements of our program. An exception, this forth category does not appear to be subject to the Commission's advisory opinion history. This is, no doubt, because the committees bare the costs involved, handle the marketing, and directly receive any resulting contributions.

For our purpose, the relevant elements of these four vendor-assisted categories appear to be the following:

Credit Card-Type Affinity Programs:¹⁰

- In this type of program, a financial institution seeks an arrangement with a political committee to use the committee's list of supporters ("Supporter List") and the committee's "goodwill" to solicit new customers
- In return, the institution offers to pay the committee a fee or commission; typically, a participation or agency fee¹¹
- Funds under these proposals are collected and paid to the committees by the vendors
- These programs have not been favored by the Commission for a variety of reasons; generally, however, these reasons come down to prohibited corporate contributions -- violations of 2 U.S.C. 441b(b)(2)

900-Line Programs:¹²

- These programs involve vendors providing a commercial 900-line program to raise funds for a committee
- Generally, the Commission allows these programs when there is a contract relationship that ensures the vendor will not be left financially at risk (e.g., the vendor: holds back funds as a reserve; is paid a fee by the contracting committee to cover marketing expenses; or, the committee deposits funds to cover the vendors marketing exposure --

⁸ See, for example, Advisory Opinions 1992-24, 1991-20, and 1990-14.

⁹ See Advisory Opinion 1990-14.

¹⁰ See, for example, Advisory Opinions 1988-12 and 1979-17. See, also, Advisory Opinion 1992-40.

¹¹ Thus, the prohibited contribution: the vendor is using the committee's assets, getting a benefit, and paying the committee for that benefit; the committee has no investment in the enterprise and no risk; and, as such, the Commission views the relationship as providing a prohibited corporate contribution.

¹² See, for example, Advisory Opinions 1991-26, 1991-20, 1991-2, 1990-14, and 1990-9.

in other words, the Commission's Two Concerns are satisfied) and when the funds paid to the committees are not commingled with corporate treasury funds

- Funds under these proposals are collected and paid to the committees by the vendors
- The Commission generally requires that the contribution funds collected for the committee be kept in a separate account from the vendors treasury funds

Committee-Contracted Vendor Service Programs (e.g., Aristotle or VITEL):¹³

- A vendor contracts with a committee (or committees) to provide a service/product that allows a purchaser of the service/product to make a contribution
- Typically, the committee pays the vendor a fee¹⁴ that helps ensure that the political committees do not receive any services for which the vendor or any third-party vendor remains uncompensated or is compensated below the usual and normal charge within the industry for all services; again, the Commission's Two-Fold Concerns are satisfied
- The vendor arranges favorable pricing for the service/product, presumably as an inducement to the buyer – but the pricing and discounts must be within industry "norms"
- The vendor pays the accumulated contributions to the committee – but the funds are generally required to be collected in a separate account so as to not be commingled with corporate treasury funds¹⁵
- This type of program has been allowed by the Commission

Prospect Piece Programs:

- This category represents a general industry practice
- Committees typically contracts for unique lists to send out mailers, etc., in an attempt to identify and harvest new supporters/donors
- Contributions are paid directly to the committee
- Under this category of programs, the committee bares all of the costs and risks of marketing the program; again, the Commission's Two Concerns are satisfied

Our Program Version

Our AOR presents a variation on these vendor-assisted fundraising themes. The differences, such as direct payments by individuals, make the Program unique as to the four listed categories. More to the new issue raised by the FEC-S, however, our Program seems to satisfy the concern about less-than-adequate-compensation to the vendor.

While the Companies expect the committees to support the program, this is not the only compensation to the Companies. In fact, the Companies are not acquiring the Supporter

¹³ See, for example, Advisory Opinions 1999-22, 1995-34, and 1994-33.

¹⁴ This is similar to the Companies' Program, except that the fee is paid directly to the Companies by the Supporter. Arguably, this eliminates any fuzzy cost accounting accomplishes the same payment goal without the funds being double-handled.

¹⁵ Again, the Program avoids this concern by providing that all parties are paid directly by the Supporter

lists to market the program, as the FEC-S seems to think. Under agreement with the Companies, the various committees themselves contact their unique list of Supporters to market the Program (much like a Prospect Piece Program, but involving known contributors). The committees retain their lists and undertake real costs and real risks associated with the marketing effort. As such, there is a cost-avoidance benefit to the Companies paid as consideration by the committees under contract, as well as direct compensation paid by the Supporter.

In other words, by agreement, the Companies are providing a service, which is purchased with a monthly service fee by a Supporter who chooses to join the Program. This per-subscriber monthly fee is within the Industries' usual and normal charges for the access and service provided to a non-political client, paid to the Companies as compensation under the terms of the contract with the committees, and ensures a reasonable profit to the Companies. Additionally, the committees assume the expense and the risks of marketing the Program in the hope that their efforts will result in direct monthly contributions from the Supporter. And, finally, the Supporter is paying both separate amounts (the monthly service fees and the monthly contributions) directly through a merchant account, ensuring that no prohibited corporate contributions are made.

Conclusion

As expressed above, our AOR presents a variation on the general vendor-assisted fundraising themes, in a manner that we believe satisfies the Commission's two underlying concerns regarding adequate compensation by committees. This is supported by the fact that the contracting committees market the Program to their unique list of Supporters means that they not only retain their lists, but also assume genuine costs and risks associated with marketing the program.

Obviously, we have the same opinion that the Companies' AOR satisfies the FEC-S's prior concerns, and we believe it addresses FEC-S's new concerns by satisfying the Commission's Two Concerns test. On a somewhat loftier plane, however, we believe that the FEC-S and the Commission should embrace our program not simply because it meets the requirements established under the Act; we believe they should also embrace it as a policy matter.

Prior Advisory Opinions have stated that where possible, the Commission has interpreted the Act and its regulations in a manner consistent with contemporary technological innovations, including the maintenance of records in non-paper form and the performance of committee transactions, where the use of the technology would not compromise the intent of the Act or regulations.¹⁶ This is an important policy position, especially in view of the need to expand the individual citizen's involvement with campaign finance in the wake of the new campaign finance reform law.

¹⁶ See, for example, Advisory Opinions 1999-2, 1999-3, 1995-35, 1995-9, 1994-40, and 1993-4.

